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In re Application of :
RUSHEFSKY, Larry, et al. :
U.S. Application No.: 09/936,634 : DECISION ON PETITION
PCT No.: PCT/US00/07310 : UNDER 37 CFR 1.47(a)
International Filing Date: 17 March 2000 :
Priority Date: 17 March 1999 :
Attorney's Docket No.: IO-1013US :
For: INTEGRATED AND MULTI-AXIS SENSOR :
ASSEMBLY AND PACKAGING :
:

This decision is issued in response to the petition under 37 CFR 1.47(a) filed by applicants on 04 June 2002. Applicants have paid the required petition fee.

BACKGROUND

On 17 March 2000, applicants filed international application PCT/US00/07310 which claimed a priority date of 26 February 1999 and which designated the United States.

On 13 October 2000, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of the basic national fee was extended to expire thirty months from the priority date, i.e., 17 September 2001.

On 12 September 2001, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 05 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required. The Notification also informed applicants that the failure to submit the declaration within two months of the date of the Notification would result in abandonment of the application.

On 04 June 2002, applicants filed a response to the Notification Of Missing Requirements, with the fee for the required extension of time. The response included declarations executed by 19 of the 20 inventors, and a petition under 37 CFR 1.47(a) seeking acceptance of the application without the signature of the remaining inventor, Axel Sigmar.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort. As discussed below, applicants here have failed to satisfy items (2) and (4).

Regarding the petition fee, applicants submitted a payment in the amount of \$130 with their petition. Item (1) is therefore satisfied.

As for item (2), nowhere in the petition do applicants expressly state that a last known address for the nonsigning inventor. Accordingly, item (2) is not satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Applicants here have filed a declaration executed by 19 of the 20 inventors containing an unsigned signature block for the nonsigning inventor. Pursuant to the MPEP, this declaration has been treated as having been signed by the co-inventors on their own behalf and on behalf of the nonsigning inventor. Item (3) is therefore satisfied.

Regarding item (4), applicants' assert that Mr. Sigmar refuses to execute the application. Under such circumstances, MPEP § 409.03(d) requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Here, the evidence submitted by applicants to demonstrate Mr. Sigmar's refusal to execute the is contained in counsel's statement's in the petition, and the exhibits thereto. The petition provides evidence that the nonsigning inventor has been provided with a copy of the application, a necessary prerequisite to claiming a refusal to sign. However, it is not clear from the present record that the nonsigning inventor has in fact refused to sign the application papers. In fact, it appears that Mr. Sigmar actually agreed to sign the application and that finalizing a consulting fee agreement is all that is required to obtain Mr. Sigmar's signature. Applicants must provide further evidence that Mr. Sigmar has refused to execute the application before item (4) above can be considered satisfied.

Applicants' have failed to satisfy all the requirements of a grantable petition under 37 CFR 1.47(a). Accordingly, the petition cannot be granted on the present record.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and should include a clear statement of the nonsigning inventor's last known address and adequate evidence of the nonsigning inventor's refusal to execute the application, as discussed above and in the form required by MPEP § 409.03(d).

No additional petition fee is required. Failure to file a timely response will result in abandonment of the application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.



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